



Errors and Omissions

Sid Kamath. P.E.

Thursday, June 11, 2015

What Will Be Presented

- Errors and Omissions (E&O) – Background
- E&O Resolution Process
- E&O – Facts



Slide 3



Objectives

- Understand why FDOT pursues recovery of Errors and Omissions (E&O)
- Understand process to identify E&O, assess responsibility, and recover E&O cost
- Understand importance of communication



Slide 2



Background

Authority: Florida Statute, Section 337.015 (3):

To protect the public interest, the department shall vigorously pursue claims against contractors and consultants for time overruns and substandard work products.



Slide 4



Statutes of Limitation

Florida Statute 95.11 subsections regarding statute of limitation periods of two (2) years - **FS 95.11(4)(a)** -, and four (4) years - **FS 95.11 (3)(a)(c)** - may be applicable to claims for premium costs against a designer for professional malpractice, negligence, or breach of contract.

The statute of limitations period “shall run from the time the cause of action/defect was discovered or should have been discovered with the exercise of due diligence.”



Slide 5



Glossary

CO	Change Order
E&O	Error / Omission
EOR	Engineer of Record (Consultant Design Engineer)
CPM	Construction Project Manager
CEI	Construction Engineer and Inspector
CCEI	Consultant CEI
DPM	Design Project Manager
OGC	Office of General Counsel
RFI	Request for Information
RTM	Resolution Tracking Module
SA	Supplemental Agreement



Slide 8



Definitions

Error / Omission:

- Acts of negligence committed in performance of engineering design service
- Acts of negligence committed in performance of construction engineering and inspection services

Breach: Failure to fulfill contractual requirements



Slide 9



Definitions

Engineer of Record (EOR):

“A Florida professional engineer who is in responsible charge for the preparation, signing, dating, sealing and issuing of any engineering document(s) for any engineering service or creative work.” For this procedure only, the EOR is a professional DESIGN consulting engineer retained by the Department to provide said services.



Slide 10



Definitions

Negligence:

As defined in *Rule 61G15-19.001(4), Florida Administrative Code*: "A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in *Section 471.033(1) (g), F.S.*, is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles."



Slide 11



Definitions

Premium Cost:

Additional cost of a contract change that would not have been incurred if the work had been included in the original construction contract.



Slide 12



Definitions

Project Suite Enterprise Edition

- **RTM: Module used to track E&O Issues resolution**



Slide 13



Premise:

Department contracts with consultant:

- **Design Consultant:** Deliver to Department a constructible set of Plans and Specifications.
- **Construction Engineering and Inspection Consultant:** Oversee construction of project in accordance with Plans and Specifications.



Slide 7



Situation

Construction Plans omit power source location and connection details for a new signal. Contractor requests instruction. CEI documents that contractor is delayed 18 days while waiting on direction from the EOR. Contractor files a claim for delay damages and is paid.



Slide 6



Best Practice #1

Communicate

- CEI; CPM; DPM; EOR/CCEI; OCG
- Methods
 - Person-to-Person
 - Telephone
 - Written / E-mail
 - Team Meetings



Slide 14



Time is of Essence

Due to a relatively short statute of limitations period from “when a cause of action/defect should have been discovered” it is imperative that OGC be consulted as soon as possible to provide an analysis/opinion of the applicable limitation period, and when a lawsuit must be filed to comply with the statute in order to preserve claims for premium costs.



Slide 15



Best Practice #2

RFI

- Initiate Issue in RTM as an RFI.
- Assess Premium Cost and Avoidability.
- Escalate to E&O when appropriate.
- Manage E&O Issue resolution.



Slide 16



Resolution Process

Document in RTM:

- Discovery
- Assessment of Premium Cost, Avoidability and Responsibility
- Recovery of Premium Cost

Topic No.: 375-020-010 Errors, Omissions, and Contractual Breaches by Professional Engineers on Department Contracts



Slide 17



Design E&O

- Focus on the Fix
 - Minimize interruptions to construction contract.
 - Involve legal to establish E&O.
- Establish partnership
 - Construction (CEI/CPM)
 - Design Project Manager (DPM)
 - EOR



Slide 18



Design E&O

DPM is responsible for resolution.

Discovery

- **CEI/CPM: Promptly notify DPM.**
- **DPM: Promptly notify EOR.**
 - **Telephone call; Written confirmation (e-mail)**
 - **Issue Early Notification Letter.**
 - **Initiate Post-Design Services.**
- **Evaluate issue.**



Slide 19



Design E&O

CEI Actions

- **Initial Assessment; Engineer's Estimate**
- **Assess Schedule Impacts and Cost**
- **Entitlement Analysis**
- **Premium Cost Analysis**
- **Prepare Contract Modification**



Slide 20



Design E&O

Coordination and Communication

- CEI prepares CO with input from DPM & EOR.
- DPM reviews CEI assessment of responsibility and premium costs, and investigates EOR liability.
- DPM seeks advice from OGC regarding determination of EOR negligence.
- Parties (FDOT and EOR) agree on EOR liability for premium costs.
- E&O Notification Letter



Slide 21



Design E&O

E&O – EOR Liabile

- Solve Problem.
- Fix Plans.



Slide 22



CCEI E&O

CPM is responsible for resolution.

- Focus on the Fix
- CPM issues Notification Letters to CCEI
- Participation – CPM OGC & CCEI
 - Solve Problem
 - Assess Responsibility
 - Assess Premium Cost
 - Agree on Resolution



Slide 23



Recovery

- Premium Cost - No Threshold
- Professional Judgment
 - Negligence
 - Business Decision
- Escalation
 - Project Level – Desirable
 - Litigation – Last resort



Slide 24



Collecting and Tracking

- **Recovery**
 - Funds - returned to Districts
 - “In Kind” Services
- **Tracking**
 - Project Suite Resolution Tracking Module



Slide 25



Errors and Omissions – Historical Data

- **Issues Resolutions: tracked since 2003**
- **Number of Issues: over 1900**
- **Majority: Design**
- **Minimum recovery: \$12.38**
- **Maximum recovery pursued: \$2.49M**
- **Average Recovery: \$13,000 (estimate)**



Slide 26



RTM Screenshot #1

Resolution Tracking Search Results (Click to collapse)

Project	District	Construction Contract	Consultant Contract	Available Code	Status	RFI?	Discovery Date	Issue Resolved	Passed Date	Premium Cost	Negotiated Recovery Amount	Total Amount Recovered
1 View	213259-4	District 2		1-AVOIDABLE-PROD CONSULTANT	RESOLVED		9/6/2013	7/18/2014		\$ 497.32	\$ 497.32	
2 View	424423-1	District 2		1-AVOIDABLE-PROD CONSULTANT	RESOLVED		6/30/2013	12/22/2014	4/15/2014	\$ 17,913.94	\$ 11,576.00	\$ 11,576
3 View	424446-1	District 2		1-AVOIDABLE-PROD CONSULTANT	RESOLVED	Yes	1/24/2014	8/11/2014	2/13/2015			
4 View	425954-1	District 2		1-AVOIDABLE-PROD CONSULTANT	RESOLVED	Yes	12/9/2013	6/30/2014	2/12/2014		\$ 0.00	
5 View	425954-1	District 2		1-AVOIDABLE-PROD CONSULTANT	RESOLVED	Yes	9/10/2013	6/30/2014	2/12/2014		\$ 0.00	
6 View	425954-1	District 2		1-AVOIDABLE-PROD CONSULTANT	RESOLVED	Yes	9/9/2013	6/30/2014	2/12/2014		\$ 0.00	
7 View	425953-1	District 2		1-AVOIDABLE-PROD CONSULTANT	RESOLVED		3/20/2014	6/7/2014	10/22/2013	\$ 8,250.00	\$ 0.00	
8 View	427325-1	District 2		1-AVOIDABLE-PROD CONSULTANT	RESOLVED		10/21/2013	2/24/2014	1/16/2014	\$ 2,500.00	\$ 2,500.00	\$ 2,500
9 View	429304-1	District 2		1-AVOIDABLE-PROD CONSULTANT	RESOLVED	Yes	8/13/2013	12/2/2013	7/30/2014		\$ 0.00	
10 View	429304-2	District 2		1-AVOIDABLE-PROD CONSULTANT	RESOLVED	Yes	8/14/2013	6/6/2014	7/30/2014			



Slide 27

RTM Screenshot #2

Resolution Tracking (Click to collapse)

Filter list by Construction Contract: [All Contracts](#)

Contract	Type	Seq	Status	Available Code	Consultant Contract	Premium Cost	Negotiated Recovery Amount
Change Order: 039							
View	CN	6	Resolved	1-Avoidable-Prod Consultant		\$ 1,812.75	\$ 1,812.75
View	CN	15	In Review	1-Avoidable-Prod Consultant		\$ 1,812.75	
Change Order: 044							
View	CN	7	In Review	1-Avoidable-Prod Consultant		\$ 1,855.10	
View	CN	13	In Review	1-Avoidable-Prod Consultant		\$ 2,514.96	
Change Order: 053							
View	SA	3	In Review	1-Avoidable-Prod Consultant		\$ 34,511.92	
Line Item: 0008							
View	CONN	1	In Review	1-Avoidable-Prod Consultant		\$ 716.24	\$ 716.24
Line Item: 0017							
View	CONF	1	In Review	1-Avoidable-Prod Consultant		\$ 0.00	\$ 1,693.90



Slide 28

Statistics

Resolved Issues [FY12/13-FY 14/15(Q3)]

Fiscal Year	2012/2013		2013/2014		2014/2015	
District	Premium Cost	Recovery	Premium Cost	Recovery	Premium Cost	Recovery
Total	\$542,653	\$30,064	\$363,951	\$61,586	\$855,496	\$60,392

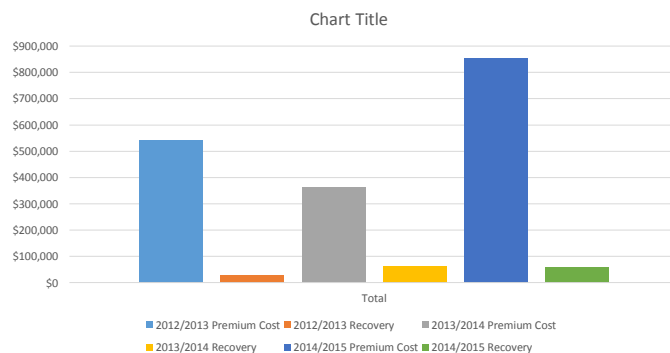


Slide 29



Statistics

Resolved Issues [FY12/13-FY 14/15(Q3)]



Slide 30



Summary

- **E&O Resolution - statutory requirement**
- **E&O Costs - Resolution and Recovery**
- **Communication - Importance in Process**
- **E&O Resolution – Tracking and Documentation**



Slide 31



District E&O Liaisons

Central Office – Sid Kamath

D1 – Kevin Ingle

D5 – Jeffrey Cicerello

D2 – Bobbi Goss

D6 – Teresita Alvarez

D3 – Ray Hodges

D7 – Mary Lou Godfrey

D4 – Tim Brock

TP – Stephen Nichols



Slide 32



Questions?



Slide 33



THANK YOU!

Sid Kamath

Ph. (850) 414-4343

Siddhartha.Kamath@dot.state.fl.us



Slide 35

